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SUBJECT: CONSTITUTIONAL REFORM - GETTING WORSE AND WORSE.

REF: A. CARACAS 710

1B. CARACAS 1635

1C. CARACAS 1727

1D. CARACAS 1913

1E. CARACAS 2013

1F. CARACAS 2019

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Classified By: Robert Downes, Political Counselor, for Reason 1.4(d)

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SUMMARY  
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11. (C) Late on Friday October 12 the Venezuelan National Assembly's Mixed Commission on Constitutional Reform announced the addition of 25 amendments to the constitution, on top of the 33 proposed by President Chavez on August 15 (Ref A). While a few of the changes are fairly innocuous, many will have a substantial impact on the economic and political structure of Venezuela. International attention has thus far largely focused on two articles that would permit the President to suspend civil liberties and human rights indefinitely in certain circumstances. International groups and even leaders of pro-government parties are condemning these measures. The latest changes, both on the political and economic side, are widespread, ending political decentralization, further weakening the supreme court and National Electoral Council, providing more government control of oil industries, possibly eliminating protections for intellectual property and national treatment of foreign investment to name a few. The Venezuelan Conference of Bishops issued a statement October 19 criticizing the proposals as giving too much power to the state and restricting civil liberties. The National Assembly began the article by article third reading of the 58 proposals on October 16 and intends to approve the measure before the end of October to allow for the currently scheduled December 2 national referendum. Most local commentators seem resigned to the probability that Chavez' package will be approved in December. End Summary

CONSTITUTIONAL AMENDMENTS DOUBLE

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12. (C) On August 15, when he introduced his package of 33 so-called "constitutional reforms" (Ref B) Chavez argued that since he was only amending less than 10 percent of the articles in his 1999 Constitution that he didn't need to call a constitutional assembly. Many opposition observers and Embassy staff suspected he would submit additional measures

before the National Assembly completed its third reading of the proposal. They were not surprised therefore when Chavez, using the National Assembly's Mixed Commission as a cover, introduced 25 additional amendments late on October 12. What was surprising was the number and scope of these amendments. The 58 proposals, which will likely be passed by the National Assembly before the end of October, and be approved by a national referendum scheduled for December 2, will fundamentally change the Venezuelan political and economic system.

#### GOOD-BYE CIVIL LIBERTIES

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¶3. (C) Thus far most international and domestic reaction to the additional amendments has focused on changes to articles 337 and 338 which will permit the President to suspend civil liberties and human rights indefinitely in vaguely defined "special circumstances". The current articles permit suspension of civil liberties, but both the scope and duration of the suspensions are carefully circumscribed and exclude denial of the right to life, incommunicado detention, suspension of due process, torture, information and other "untouchable human rights". The much broader changes have drawn criticism not only from international organizations, such as Human Rights Watch and Reporters Without Borders, but also the leaders of three pro-government parties. Podemos, Patria Para Todos and the Communists have all raised public concerns with the measures. The Archbishop of Merida Baltazar Porras called proposals "morally unacceptable". The Council of Bishops issued a statement on October 19 calling the proposals "Extremely grave because they modify the fundamental structure of the democratic state ... increase excessively the power of the government, and limit personal liberties and freedom of religion."

#### FURTHER CONCENTRATION OF PRESIDENTIAL POWER

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¶4. (C) As noted in reftels, the initial 33 amendments sharply expanded the constitutional powers reserved to the president.

The additional amendments continue this trend. They weaken the power of the Supreme Court and National Electoral Council, merge the military into a militia for popular power, undermine university autonomy and eliminate decentralization as a goal for the constitution. The new amendments also make it much more difficult for the national assembly or for the public to propose amendments to the constitution in the future, but makes it relatively easy for the President to do so.

#### THE ECONOMY SHIFTS TOO

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¶5. (SBU) A number of proposed constitutional modifications to the previous proposals (Ref E) will have significant economic and commercial consequences. These include, weakening intellectual property rights (IPR) protection and the protection of personal property, legalizing opaque off-budget slush funds, increasing presidential discretion in funding state and local government, possibly eliminating national treatment of foreign investment, and increasing state control of petroleum operations.

¶6. (SBU) Intellectual Property Rights: Article 98 of the 1999 constitution guaranteed state protection for intellectual property rights in &scientific, literary and artistic works, inventions, innovations, trade names, patents, trademarks, and slogans, in accordance with the conditions and exceptions established by law and the international treaties executed and ratified by the Republic in this field.<sup>8</sup> The proposed article weakens this protection and states, "Cultural creation is free. This liberty is understood as the right of cultural diversity in the invention, production of the creative, scientific,

technological, and humanistic works, including legal protection of the rights of the author over his work."

¶ 17. (SBU) It is not clear what these changes are intended for or whether this article applies to only copyrights or also includes patents. Although the proposed article does not explicitly do away with IPR protections, it notably omits any mention of abiding by established law and international treaties and no longer refers to various intellectual property rights by name. According to local analysts, this measure could be construed as violating a number of Venezuela's bilateral and multilateral obligations, including TRIPS and would complicate any efforts to rejoin the Andean Community. Approval of the now proposed article 98 would seem to complicate Venezuela's proposed membership in Mercosur (Ref A), if passed in its current form (Septel).

¶ 18. (U) Property Rights: Article 115 of the current Constitution guarantees the right of property and gives individuals the right to "use, enjoy, and dispose of their goods." Property may be expropriated for public benefit or social interest only after final legal judgment, and with timely payment at fair compensation. The proposed article 115 would recognize five types (and six classes) of property and guarantee that there are different types of property Ref E). Under Chavez, proposal of August 15, 2007 the phrase to "use, enjoy, and dispose of their goods" was removed from the definition of private property. In the National Assembly version of October 15, 2007 the phrase was reinserted, perhaps due to public objection to its removal. The proposed change allows the State the right to occupy any kind of property, during an ongoing judicial process or expropriation, as opposed to after final judgment and after fair indemnity.

¶ 19. (C) Income Distribution: In the current article 167 the BRV distributes 25 percent of budget federal revenues among the states. Under the proposed article, beginning in 2009, 30 percent of these State distributions would be divided equally among the states and 70 percent would be weighted by the population of each entity (states and Federal District).

Also a minimum of five percent of annual federal income would be transferred to the newly created National Fund of Popular Power for distribution to communities, communal councils and communes. (Comment: Chavez has repeatedly attacked the independent power centers in the states and municipalities, whether controlled by pro-government or opposition leaders.)

¶ 10. (SBU) National Treatment: The proposed reform of Article CARACAS 00002050 003.2 OF 004

301 retains language on the State's obligation to protect national investment but deletes the final line of the current article that guarantees national treatment for foreign investment.

¶ 11. (SBU) PDVSA: Article 303 currently decrees that all shares of the state oil company PDVSA shall be retained by the State. However, an exception is made for entities necessary to the development of PDVSA businesses. The proposed new article 303 excludes any total or partial privatization of any PDVSA related entities and eliminates the current articles, exceptions. As is the case with other proposed articles it is not clear what this means for current private sector participants in joint ventures with PDVSA. The proposed changes to article 302 appear to eliminate private sector participation in the exploration, exploitation, collection, transportation, and storage of liquid, solid or gaseous hydrocarbons.

WHERE IS THE OPPOSITION?  
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¶ 12. (C) As the opposition to President Chavez boycotted the 2007 National Assembly elections, they have no formal role in

the National Assembly's review process. Opposition parties do however uniformly oppose Chavez' entire constitutional amendment package and have been speaking out publicly at every opportunity. Nonetheless some in the opposition camp continue to debate the wisdom of participating in the referendum vote. Opposition parties such as Un Nuevo Tiempo, more left wing Causa R, and the Christian Democrats (Copei) are working together and along with Primero Justicia, have signaled that they will likely participate in the referendum voting. They have also called a march for November 3. Accion Democratica's leaders are opposed to participating in what they view as a flawed or fraudulent process, but may allow their members to make up their own minds.

¶13. (C) Thus far the most effective opposition has come from pro-government party Podemos, whose leaders have objected both to the substance and constitutionality of the amendment process. Podemos rank and file answered Sucre governor Ramon Martinez' call for a march on October 19 against elements of the package, although the number of actual marchers was reduced because the national guard prevented buses of marchers from the states of Anzoatequi, Sucre, Zulia, and Carabobo from reaching Caracas. Podemos Secretary General Ismael Garcia noted the party's representatives will vote against some, but not all of the proposed articles. They have abstained from all articles so far. The Venezuelan Communist Party and left-wing Patria Para Todos have publicly criticized elements of the proposals, but have indicated that they will, for the moment, neither march nor vote against the package.

¶14. (C) Student leaders have been relatively quiet in public until recently. Several were, along with opposition journalists, involved in scuffles outside of the National Assembly's debate on October 15 (REF F). Calling the proposed changes as a "Coup Against the Constitution", student leaders have called a march on October 23. Embassy understands from student and opposition leaders that the students are somewhat more fractured than they were in May and June, also arguing over whether or not to participate in the referendum. The students, however, will likely work more closely together once they begin to engage in more public demonstrations on October 23. Student and opposition leaders told PolCounts they expected a sizable turnout on that date.

¶15. (C) Members of the Catholic Church, most notably, Bishop Baltazar Porras of Merida have publicly criticized the proposed constitutional amendments. The Council of Bishops statement mentioned previously was read to the press by the Bishop of Cumana Diego Padron on October 19 and was stronger than many observers expected in its rejection of the proposed changes. It asserted that the proposals undermined pluralism, which the Council characterized as a sacred value in the constitution.

COMMENT

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¶16. (C) The leadership of the National Assembly is rapidly pushing the package through its third reading, with the stated intention of completing work by Friday, October 26, but in no case beyond the end of October. By the end of the day on October 18 the assembly had already approved 20 of the

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58 amendments with more scheduled for consideration on October 19. Thus far the political opposition, church, students and pro-government parties have been ineffective at either modifying or delaying the amendment process. While pro-government party Podemos has asked the Supreme Court to rule on the constitutionality of the current process, there seems little likelihood the court will rule against Chavez.  
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